

Wachovia Corporation
One Wachovia Center
301 South College Street
NC 0630
Charlotte, NC 28288-0630

Michael A. Watkins
Senior Vice President and
Deputy General Counsel
Tel 704-715-2489
Fax 704-715-4496



WACHOVIA

January 30, 2004

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Electronic Address: regs.comments@federalreserve.gov

Re: Proposed Rules: Regulation Z (Docket No. R-1167); Regulation B (Docket R-1168);
Regulation E (Docket No. R-1169); and Regulation DD (Docket No. R-1171)

Dear Ms. Johnson:

This letter is submitted on behalf of Wachovia Corporation and its subsidiary companies, including Wachovia Bank, National Association, and its operating subsidiary, Wachovia Mortgage Corporation; Wachovia Securities, LLC; HomeEq Servicing Corporation, a mortgage loan servicing company; and Wachovia Bank of Delaware, National Association (collectively referred to as "Wachovia").

Wachovia has reviewed the Board of Governors' ("Board") proposals to amend Regulations Z, B, E, M, and DD (collectively, "Regulations") and appreciates the opportunity to offer its comment. In the interest of avoiding repetition, Wachovia has elected to combine its comments to proposed amendments to Regulations Z, B, E, and DD. Wachovia does not currently offer consumer leasing products, and thus will not comment specifically on the proposed amendments to Regulation M. To the extent that Wachovia's comments below concerning the "clear and conspicuous standards" may apply to Regulation M, however, Wachovia asks that the Board consider these.

Clear and Conspicuous Standards

Wachovia commends and supports the Board's goal that consumers receive disclosures containing easily discernible, meaningful information that provide consumers the ability to compare terms among financial institutions and other providers of financial services. We appreciate the Board's intention to clarify further the Regulations by providing a uniform standard for required disclosures. We agree with the Board that Regulation P, relating to privacy, contains the most detailed guidelines for clear and conspicuous standards among the existing consumer Regulations discussed in this letter.

We believe, however, that the disclosure consistency standards set forth in Regulation P and the proposed Regulations are not logical and will not serve consumers well. Wachovia believes that each of the Regulations currently contains appropriate safeguards to bring important terms to the consumer's attention. Wachovia is concerned that the proposed rules will (i) impose unintended significant additional regulatory and administrative burdens on financial institutions; (ii) increase the costs of production and delivery of required disclosures; (iii) diminish the importance and consumer understanding of other necessary information; and (iv) expose financial institutions to risk of additional regulatory or judicial review. Moreover, Wachovia believes that consumers would not receive substantial additional benefits from the proposed clear and conspicuous standard and, in some cases, would more likely be inconvenienced or confused.

The Regulation P Standard May Not Be Appropriate

When enacting the Gramm Leach Bliley Act ("GLBA"), Congress clearly expressed its intent that financial institutions provide consumers a separate set of information describing how financial institutions and others would protect, use and share both personal and non-personal financial information about consumers. It was anticipated that, while this separate privacy information might be delivered with other information, such as account opening documents or contracts, it would be presented in a sequential form that would not be and, indeed, could not be commingled with other information provided by the financial institution. By segregating privacy disclosures from other information, Regulation P disclosures would be conspicuous, calling consumers' attention to this separate set of information.

This standard is not readily applicable to other consumer regulations, where disclosure or required language are, for the sake of overall consumer understanding, commingled with other financial information or contract terms. In order to be conspicuous, the information in some instances may need to be segregated from other information that the customer receives. In other cases, a different format, type size or bullet would actually make the required disclosures more conspicuous, even though the proposed regulations do not require such a standard. Wachovia is very concerned that this may divert the customer's attention from other equally important terms and conditions.

Wachovia believes that the technical requirements of Regulation P are appropriate in both substance and form for that regulation. Similarly, the requirements for disclosing required

terms and conditions in the Regulations are already well defined and not the subject of confusion or dispute. Requiring that financial institutions use the clear and conspicuous standards of Regulation P is not necessary to enhance clarity or customer understanding. Wachovia urges the Board to reconsider carefully the application of such a standard (designed for a non-financial, non-transactional regulation) to the range of financial and transactional regulations that the proposed Regulations would affect.

The Definitions Will Require More Than "Clear and Conspicuous" Standards

The proposed clear and conspicuous definition provides little guidance to financial institutions. The additional detail in the Official Staff Interpretations, however, raises the issue of how financial institutions may need to re-design forms to meet the new standards. The Board specially states that

... the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms . . . However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met.¹

The definitions in the Official Staff Interpretations offer additional guidance for complying with the clear and conspicuous standard, suggesting methods including bulleted lists, active voice, plain-language headings, wide margins, suggested typeface, etc., to call attention to the disclosures.² The cumulative effect of applying the definitions to the required disclosures in the Regulations will change the standard from "clear and conspicuous" to "more conspicuous." Unless the disclosures are in some way delineated from other information, financial institutions may be exposed to consumer complaints, regulatory enforcement actions and potential litigation.

Furthermore, Wachovia is concerned that the standards for creating clear and conspicuous disclosures may direct consumers' attention away from other important terms and thus affect the manner in which they handle accounts or obtain important information. While Wachovia believes that required consumer disclosures are important and necessary to explain the use, protection and management of accounts to consumers, we also believe that consumers must understand how their accounts will be administered under applicable contracts with their financial institutions.

For example, the clear and conspicuous standard appears to require that electronic funds transactions appearing on monthly account statements be conspicuous. The proposed Regulations offer financial institutions a number of different methods to accomplish this. Most, such as bold print or different type size, are not within the present capability of computer systems used by many financial institutions. One immediately available alternative is to segregate the electronic funds transactions from all other transactions on monthly or

¹ 12 CFR 226.2(a)(27)-3; 12 CFR 202.2(bb)-3; 12 CFR 205.2(n)-3; 12 CFR 230.2(w)-3.

² 12 CFR 226.2(a)(27)-1; 12 CFR 202.2(bb)-1; 12 CFR 205.2(n)-1; 12 CFR 230.2(w)-1.

other periodic statements. By so doing, financial institutions would meet the proposed regulatory requirements; however, this reordering will limit customers' options to have transactions listed in date order, presentation order, or balance order. Should financial institutions develop, at what Wachovia estimates would be a significant cost, the ability to change fonts or use bold print, the resulting standard would change from "clear and conspicuous" to "more conspicuous." Wachovia believes that customers may unnecessarily be confused by such changes.

The Proposed Regulations Will Require Significant Costs and Implementation Time

Wachovia has not had the opportunity to assess fully the impact the proposed Regulations would likely have on all affected documents and disclosures. Each document that is delivered to customers, whether in paper or electronic format, must be reviewed and evaluated under the proposed guidelines. Wachovia and many other financial institutions have found comfort in and have relied heavily on the model forms and clauses found in the Regulations. Notwithstanding the legal protections that the use of these forms provide, the model documents provide customers with a standard format for required disclosures. In our view, the model forms do not appear to satisfy the regulatory guidelines set forth in the proposed Regulations. Thus, financial institutions would be required to create their own forms in non-standard formats, each attempting its own independent interpretation of the proposed requirements. Wachovia submits that the loss of standard language and format will make it more difficult for customers to compare terms among different financial institutions.

Many forms used by financial institutions have fixed formats that have been preprogrammed for computer use. Programmers understand from experience that a seemingly simple adjustment to a font size can have a major impact on the accuracy and appearance of a form. For example, a state legislature several years ago changed the type size requirements for installment sale contracts. The document, which was originally 8 ½ inches by 11 inches, grew to 8 ½ inches by 16 inches. All existing supplies of the document were discarded, and each individual computer that prepared the document required reprogramming. Similar issues arise under the proposed Regulations.

Wachovia is concerned that reprogramming and retooling costs, which we estimate to be substantial, may become exorbitant should the Regulations also include disclosures required at automated teller, point of sale and cash machines (collectively, "ATMs"). While it may be possible to reprogram fonts and adjust document sizes on ATM receipts, we are concerned that older machines may require significant improvements to meet the proposed requirements. Moreover, new clear and conspicuous notices required to be posted on the face of ATMs may interfere with customer use and visibility. In the event that the Board should adopt the Regulations substantially as proposed, Wachovia strongly urges the Board to exempt ATM transactions and documents from the clear and conspicuous standards.

The clear and conspicuous requirement may also increase production and mailing costs significantly. Periodic statements, such as checking and other deposit account statement and open-end credit statements, are produced by Wachovia and its vendors. Statements are

designed to be folded in a prescribed manner and to fit into specific envelopes. Privacy statements, promotional materials and advertising to be inserted in these envelopes are designed based upon the size of the envelope and the anticipated average weight of mailing. Wachovia annually projects the costs of production and mailing of these statements, including planned compliance disclosures, promotional materials and advertising, and with limited exceptions, these costs are fixed in annual budgets.

Wachovia believes that the proposed clear and conspicuous requirements may cause these periodic statements to become longer in length, requiring a different envelope and substantially increased vendor costs to support a different insertion methodology. Account statements may require a significant number of additional pages, which will result in increased mailing costs, and may irritate customers who would prefer not to receive additional pages. In light of the fact that current disclosure standards already require that documents not mislead or misinform customers, Wachovia believes that the proposed changes will cause financial institutions to incur substantially significant additional and unnecessary costs.

The Board has stated in the Regulations that the "revisions would not increase the paperwork burden" of financial institutions and other entities. Wachovia submits that the financial costs and administrative burdens resulting from the destruction of documents, the redesign and printing of new documents, the increased mailing costs, and the significant costs of reprogramming computers and training personnel would substantially outweigh the potential benefits to consumers. Wachovia urges the Board not adopt these changes or, in the alternative, delay implementation for a period of not less than six months to allow for use of existing supplies and time for planning, programming and training. Wachovia also urges that any six-month or longer implementation period be extended to not less than nine months if ATM requirements are included in the proposed Regulations.

The Proposed Regulations Will Impose New Regulatory and Judicial Risks

The clear and conspicuous standard is derived from Regulation P, which contains no civil or criminal penalties for non-compliance. While privacy statements are reviewed by federal bank examiners during regular compliance examinations, and while financial institutions and others may be subject to enforcement actions for non-compliance, there are no other entities that have the authority to review and interpret the content of the privacy disclosures or to impose monetary penalties for alleged non-compliance.

Financial institutions are well acquainted with the varied judicial interpretations of these Regulations. Until the Official Commentary and the model forms for Regulation Z provided a "safe harbor" for compliance, financial institutions doing business in multiple jurisdictions were subject to inconsistent legal interpretations concerning the design and delivery of required disclosures. In this connection, the United States Supreme Court recently granted certiorari for a Virginia case involving a judicial interpretation of a car dealer's liability under Regulation Z.³

³ Nigh v. Koons Buick Pontiac, 2003 WL 231322 (4th Cir (E.D. VA), 2003).

Wachovia is concerned that financial institutions will face similar judicial scrutiny if the proposed Regulations are adopted. While the proposed Regulations appear to exempt advertising from the clear and conspicuous requirements, the proposed language is ambiguous. Proposed standards such as "ample line spacing," "distinctive type size," and "short explanatory sentences" may become the subject of consumer litigation and legal interpretation. What financial institutions deem to be "definite, concrete, everyday words" may vary by geographic region or consumer group. Absent additional clarity in the proposed Regulations and specific formats such as those used in the various appendices thereto, courts may impose varying definitions of what constitutes a "clear and conspicuous" disclosure. In addition to the civil penalties prescribed in the Regulations, financial institutions would likely face increased costs of litigation, some perhaps frivolous, before these issues are more clearly resolved.

Wachovia strongly believes that the consumer is well-served by the disclosure requirements of the Regulations in their present form, and sees no substantial benefit resulting from redefining the standard as set forth in the proposed Regulations. For the reasons stated above, Wachovia strongly recommends that the Board not adopt the proposed amendments dealing with clear and conspicuous disclosures.

Wachovia appreciates the opportunity to comment on the proposed regulations listed above. If you have any questions, please call Jane Stafford, Senior Vice President and Director of Compliance, at 704-383-0927.

Very truly yours,

Michael A. Watkins

cc: Via Electronic Mail

Wachovia Corporation:

Mark Treanor, Senior Executive Vice President and General Counsel

Jane Stafford, Senior Vice President and Director of Compliance